IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

ADAM EUGENE KOBS, an individual, and N.K., a minor, by and through his father and natural guardian, Plaintiffs, v. SILVERTON SHELTERING SERVICES d.b.a. SHELTERING SILVERTON, an Oregon nonprofit corporation; SARAH WHITE, an individual; JOSEPH SCHAMUS, an individual; JORDAN SIMS, an individual; and TRAVIS DEAN GLIDDEN, an individual, Defendants.	Case No. 25CV57849 **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

MOTION

Pursuant to ORCP 23A, defendants Silverton Sheltering Services, Sarah White, and Joseph Schamus object to plaintiff's motion for leave to file a Second Amended Complaint because plaintiff's proposed Second Amended Complaint contains the same defects as the current Amended Complaint, which is the subject of a pending motion to dismiss. Plaintiff has already amended his complaint once as a matter of course and may not do so again without consent of defendants or the Court. In the alternative, defendants ask this Court to consider the pleading defects of plaintiff's Amended Complaint and proposed Second Amended Complaint at the same hearing.

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PROCEDURAL POSTURE

Defendants filed a Motion to Dismiss plaintiff's Amended Complaint on December 9, 2025. Plaintiff filed an Opposition to the Motion to Dismiss on December 10, 2025. Defendants filed a Reply on December 17, 2025. Plaintiff filed a motion for leave to file a sur-reply on December 23, 2025, which the Court has not ruled on. Plaintiff filed a motion to amend and file a Second Amended Complaint on February 6, 2025, while the motion to dismiss the Amended Complaint is pending. Rather than requiring that defendant begin anew in moving against plaintiff's Second Amended Complaint, the motion to Amend should be denied and Plaintiff's First Amended Complaint should be dismissed for failure to state a claim.

ARGUMENT

1. *Allowing plaintiff to file his proposed Second Amended Complaint is futile because it contains the same deficiencies as his Amended Complaint.*

Allowing plaintiff leave to file a Second Amended Complaint is futile because it contains the same deficiencies as his Amended Complaint. Defendant's Motion to Dismiss has been pending since December 9, and unless the Court grants the plaintiff's motion for sur-reply, the matter is already fully briefed. What follows is an overview of plaintiff's additions to his Second Amended Complaint and why they do not remedy the deficiencies already articulated in defendant's Motion to Dismiss and Reply to Plaintiff's Opposition to Motion to Dismiss.

A. *Additional General Allegations*

Plaintiff now alleges that defendants failed to preserve CCTV footage of an incident that allegedly occurred on or about August 19, 2024, between plaintiff, Travis Glidden, and Jordan Sims. *Second Amd. Cmplt.* at 5. Plaintiff alleges that the defendant Sheltering Silverton failed to preserve CCTV footage after receiving a tort claim notice on October 6, 2025. *Id.* at 9. This Court has already been briefed extensively on this issue, and Sarah White has submitted to this

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Court a signed declaration that the CCTV footage is no longer in Sheltering Silverton's possession because it was deleted days after the incident. *See Decl. of Sarah White.* Defendants were not on notice that plaintiff would file a suit against them and had no obligation to preserve the footage. Thus plaintiff's allegation that defendant owed him a duty to preserve CCTV footage is a moot point.

B. *Negligence*

Plaintiff's Second Amended Complaint alleges a special "shelter-client relationship" between himself and Sheltering Silverton. As defendants have advanced before, "a plaintiff who has suffered emotional distress as a result of a defendant's negligence ordinarily may not recover damages for such emotional harm in the absence of some sort of physical impact." *I.K. v. Banana Republic, LLC*, 317 Or App 249, 254 (2022). Oregon law provides an exception to this rule in *Philibert v. Kluser*, 360 Or 698 (2016), which established that when a plaintiff has not alleged physical harm, they may recover for emotional damages "when the defendant's conduct infringed on some legally protected interest apart from causing the claimed distress." *Id.* at 704. Additionally, the Court held that "[t]he right to recovery for such injuries does not arise from infringement of every kind of legally protected interest, but from only those that are of sufficient importance as a matter of public policy to merit protection from emotional impact." *Id.* at 705 (internal citation omitted). Oregon courts "recognize[ ] a plaintiff's legally protected interest when another party has a legal duty 'designed to protect plaintiff[ ] against the type of harm which * * * occurred.'" *Id.* citing *Nearing v. Weaver*, 295 Or 702, 708 (1983).

Plaintiff Second Amended Complaint attempts to circumvent that rule by claiming that the relationship created a "legally protected interest in his physical safety and security from foreseeable violent acts by third parties on the premises." *Second Amd. Cmplt.* at 13. To defendants' knowledge, no Oregon case exists that establishes that a special relationship is created between a client and homeless shelter when the client signs a shelter guest agreement. But even if the Court finds that a "shelter-client" relationship exists which defines defendant's

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duty to plaintiff, plaintiff's claim still fails because plaintiff has not pleaded that his alleged "legally protected interest" in physical safety was violated, because he still fails to allege that he was physically harmed. His claim for negligence should be dismissed.

C. *Premises Liability*

Similar to the negligence claim, plaintiff has not alleged that he was physically harmed. Plaintiff has articulated no theory as to how he could recover under a theory of premises liability when plaintiff was not physically harmed.

D. *Negligent Hiring, Retention, and Supervision*

Similar to the negligence and premises liability claims, plaintiff was not physically harmed. Defendants are not aware of any case in which a court found a plaintiff was able to recover under a theory of negligent hiring, retention, and/or supervision when plaintiff was not physically harmed.

E. *Intentional Infliction of Emotional Distress*

1. Intent

An Intentional Infliction of Emotional Distress ("IIED") claim has three elements: (1) that defendants intended to cause plaintiff severe emotional distress or knew with substantial certainty that their conduct would cause such distress; (2) that defendants engaged in outrageous conduct, i.e., conduct extraordinarily beyond the bounds of socially tolerable behavior; and (3) that defendants' conduct in fact caused plaintiff severe emotional distress. *House v. Hicks*, 218 Or App 348, 357–58 (2008); *McGanty v. Staudenraus*, 321 Or 532, 543, 550 (1995). *In McGanty v. Staudenraus*, 321 Or at 550–5 (1995), the Oregon Supreme Court reconsidered the common-law rule regarding the level of intent necessary to establish a cause of action for IIED and adopted comment i of the *Restatement (Second) of Torts* section 46 (1965) as Oregon's definition

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of the "intent" element for such a claim: "The rule stated in this Section applies where the actor desires to inflict severe emotional distress, and also where he knows that such distress is certain, or substantially certain, to result from his conduct."

Under the *McGanty* intent standard, plaintiffs must allege that defendants acted with the desire to cause him severe emotional distress, or with the knowledge that such distress was substantially certain to result from their actions. Plaintiff's allegations with respect to his IIED claims, which are set forth below, are facially insufficient to state a claim even when taken as true and giving him the benefit of all reasonable inferences.

Plaintiff alleges in the Second Amended Complaint that three specific actions taken by White showed her intent to harm him: public shaming, false accusations, and retaliatory ban. *Second Amd. Cmplt.* Specifically, Plaintiff alleges White's extreme and outrageous actions were that she called plaintiff a "creep," sent a text to plaintiff claiming plaintiff had "a history of showing interest in vulnerable women," and banned him from shelter property, which plaintiff characterizes as retaliation. *Second Amd. Cmplt.* at 10, 14. As to the last allegation, plaintiff does not specify which of his actions caused White to retaliate against him. None of these actions demonstrate that White intended to cause emotional harm to plaintiff, or that she knew that her actions were substantially certain to cause him emotional distress. His claim for IIED should be dismissed.

2. Nature of Conduct

As indicated above, one of the elements of a claim for IIED is that the defendant must have engaged in outrageous conduct, i.e. conduct extraordinarily beyond the bounds of socially tolerable behavior. *House* at 357–58; *McGanty* at 543; *Checkley v. Boyd*, 198 Or App 110, 125 (2005). While deciding the contours of "social norms is precisely the sort of inquiry that is appropriately undertaken by a jury, in the context of an IIED claim, the court, functioning as a gatekeeper, performs that role in the first instance." *Clemente v. State*, 227 Or App 434, 442

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(2009); *Pakos v. Clark*, 253 Or 113, 132 (1969); *House* at 358. The relationship between the parties has bearing on potential characterization of conduct as extreme or outrageous because "a defendant's position or role vis-à-vis a plaintiff may be one that 'imposes on the defendant a greater obligation to refrain from subjecting the victim to abuse, fright, or shock than would be true in arm's-length encounters among strangers.'" *Williams*, 153 Or App at 689–90, 958 (quoting *McGanty* at 547–48).

Defendant already enumerated the three specific actions taken by White that plaintiff alleges were extreme and outrageous in the previous paragraph. *See Second Amd. Cmplt.* at 10, 14. Nothing alleged by Plaintiff could reasonably be construed as illegal conduct, publication of statements known to be false that defame or significantly stigmatize, actions undertaken with an ulterior motive to advance an unlawful or illegitimate end, unwanted physical contact of an extreme nature (i.e. sexual or violent), or verbal abuse, which are the types/nature of conduct found by the Oregon Supreme Court and Court of Appeals to qualify as outrageous conduct that is actionable in an IIED claim. Neither defendant White nor Sheltering Silverton, as a matter of law, engaged in extreme or outrageous conduct toward plaintiff, and his IIED claim should be dismissed.

F. *Negligent Infliction of Emotional Distress*

A person cannot recover for negligent infliction of emotional distress ("NIED") absent physical injury, or if the person is not threatened with physical injury or physically impacted by the tortious conduct. *Lockett v. Hill*, 182 Or App 377, 380 (2002); *Hammond v. Central Lane Communications Center*, 312 Or 17, 22–23 (1991). In this case there are no allegations that Plaintiff suffered a physical injury, was threatened with physical injury by defendants Sheltering Silverton, Sarah White, or Joseph Schamus, or that he was physically impacted by Defendants' actions

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In the absence of a physical injury, an actionable NIED claim requires that a defendant "negligently cause[d] foreseeable, serious emotional distress and also infringe[d] some other legally protected interest." *Moody v. Oregon Cmty. Credit Union*, 371 Or 772, 784 (2023) (quoting *Philibert v. Kluser*, 360 Or 698, 702 (2016)). Further, recovery for emotional distress does not "arise from infringement of every kind of legally protected interest, but from only those that are 'of sufficient importance as a matter of public policy to merit protection from emotional impact.'" *Lockett*, 182 Or App at 380 (2002) (quoting *Hilt v. Bernstein*, 75 Or App 502, 515 (1985), rev. den., 300 Or 545 (1986)). In *Moody v. Oregon Cmty. Credit Union*, the Oregon Supreme Court reviewed the circumstances in which the existence of a "legally protected interest" was recognized for purposes of supporting an NIED claim:

> Those circumstances included those in which a plaintiff had alleged (1) a right against certain wrongful invasions of privacy, such as the invasion discussed in *Hinish v. Meier & Frank Co.*, 166 Or. 482, 506, 113 P.2d 438 (1941) (allowing claim for emotional distress when plaintiff's name was signed without his consent on a telegram to the governor); (2) a right to have a party comply with an obligation found in a court order or statute designed to protect the plaintiff from the type of emotional harm that occurred, such as the statute at issue in *Nearing v. Weaver*, 295 Or. 702, 708, 670 P.2d 137 (1983) (right to have officers comply with statute requiring arrest to protect victims of domestic violence) and the order at issue in *McEvoy v. Helikson*, 277 Or. 781, 787-89, 562 P.2d 540 (1977) (right to have lawyer comply with order requiring retention of child's passport to protect father's interest in child's custody); and (3) certain other common-law rights such those recognized in *Macca v. Gen. Telephone Co. of N.W.*, 262 Or. 414, 418, 495 P.2d 1193 (1972) (right to be free from private nuisance) and *Hovis v. City of Burns*, 243 Or. 607, 613, 415 P.2d 29 (1966) (right to have the remains of a deceased spouse remain undisturbed)

Moody at 785-86 (relying on *Philibert*, 360 Or at 705-06). In the Second Amended Complaint, Plaintiff's alleged a "legally protected interest in his physical safety and security from foreseeable violent acts by third parties on the premises." This is exactly the type of interest plaintiff concedes was not violated, as he has alleged no physical damages. Additionally, he does not sufficiently state how his alleged legally protected interest is designed to protect him from the nature of emotional harm. His NIED claim is insufficient to subject defendant to liability for

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emotional distress damages. Plaintiff's Second Amended Complaint fails to state a claim for NIED and it should be dismissed.

G. *Breach of contract*

The argument made in defendant's Motion to Dismiss Plaintiff's Amended Complaint and its Reply are effectively the same, as plaintiff has alleged no new facts to modify the analysis. Plaintiff's Second Amended Complaint does not allege sufficient facts to demonstrate that defendants made to him a legally recognizable "promise," and plaintiff's job search for employment with DoorDash did not constitute "consideration." His claim for breach of contract should be dismissed.

2. *In the alternative, the Court should hear plaintiff's amended complaint and second amended complaint at the same time.*

If the Court grants plaintiff leave to file his Second Amended Complaint, defendants request that the Court consider the Second Amended Complaint at the same time it decides the pending motion to dismiss the First Amended Complaint.

CONCLUSION

Plaintiff's Second Amended Complaint makes no new material allegations, and the Court should not allow him to replead. In the alternative, the Court should hear the deficiencies in the Second Amended Complaint simultaneously with defendant's pending Motion to Dismiss plaintiff's First Amended Complaint.

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Dated this 20th day of, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** on the date indicated below and to the party/attorney(s) indicated below:

☐ Courtesy mail with postage prepaid, deposited in the US mail at Portland, Oregon; I further certify that said copy was placed in a sealed envelope delivered to attorneys at the addresses listed below.

☒ OJD Efiling System (File & Serve) (i.e., "Electronic service" means the electronic transmission of a notice of filing by the electronic filing system to the electronic mail (email) address of a party who has consented to electronic service under UTCR 21.100(1)).

☒ Via Email.

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DATED: February 20, 2026

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